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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1963

No. 1009

In re Suspension of
MAURICE W. TINDALL
from Judicial Office.

In re Suspension of
GLENN W. EVANS
from Judicial Office.

PETITION FOR WRIT OF CERTIORARI
to the Supreme Court of the
State of California

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to the Supreme Court of the State of California

Petitioners pray that a writ of *certiorari* issue to review the judgment of the Supreme Court of California entered in the above entitled case on November 18, 1963.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of California is reported in 60 A.C. 445, 34 Cal. Rptr. 849, and is attached hereto as Appendix B, pp. xi-xiv.

JURISDICTION

The judgment of the Supreme Court of California was entered November 18, 1963. No petition for rehearing was filed. Application to this Court to extend Petitioners' time within which to file this petition to April 16, 1964, was made on February 4, 1964. Jurisdiction is invoked pursuant to 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Does the refusal of the Supreme Court of California to permit petitioners to collaterally attack an adverse judgment in another judicial proceeding deny them Fourteenth Amendment procedural due process?

2. If California courts permit broad inquiry into the absence of jurisdiction over the subject matter or of the person at all stages of any civil or criminal proceeding, is it an invidious discrimination against these petitioners to refuse to permit them to collaterally attack their criminal convictions by the presentation of evidence showing that their acts were *ex officio* to their judicial position and subject thereby to the rule of judicial immunity, thus denying to petitioners Fourteenth Amendment equal protection of the laws?

STATUTES INVOLVED

The constitutional and statutory provisions herein involved are Article IV, Section 4, and Amendment XIV, Section 1 of the Constitution of the United

States; Article III, Section 3, Article VI, Sections 10, 10a, 10b and 11 of the Constitution of California; Sections 170 and 182 of the California Penal Code and Sections 1908, 1909 and 1963, Subdivisions 16 and 17 of the California Code of Civil Procedure. They are printed in Appendix A hereof, pp. i-x.

STATEMENT OF THE CASE

Petitioners Tindall and Evans were respectively Judges of the Justice Court for the Anderson Judicial District and the Round Valley Judicial District in the County of Mendocino, State of California. They and two others, not judges, were tried by the Superior Court of Mendocino County and convicted on two counts of felony conspiracy; in count one to "pervert and obstruct justice and the due administration of the law" in violation of §182, subdivision 5 of the Penal Code and in count two with a conspiracy to commit the substantive crime of misdemeanor to maliciously procure a warrant of arrest in violation of Penal Code §170. Penal Code §182, subdivision 1, in part provides that it is a felony if two or more persons conspire to commit any crime. (Appendix A, pp. vii and viii.)

Subsequent to their trial court convictions, petitioners received suspended sentences, probation and were fined. Whereupon an Order to Show Cause was issued out of the Supreme Court of California as to why petitioners ought not to be suspended from their

judicial positions pending final judgment on their convictions. In this regard the Court below acted in reliance upon the language of Article VI, Section 10a of the Constitution of California. (Appendix A, pp. iii-iv.) Petitioners demurred to the Order to Show Cause, in effect declaring that the acts for which they were convicted were judicial in nature, subject thereby to the rule of judicial immunity and that their convictions were an unwarranted and unconstitutional invasion by the executive branch of the government of California (the Attorney General) into the independence of the judiciary in violation of the guaranty of a republican form of government by the United States to the several states (Article IV, Section 4), thereby denying to petitioners procedural due process as set forth in the first section of Amendment XIV. The Order to Show Cause and Petitioners' Return and Points and Authorities thereto are set forth in the Record filed with this Court at pages 14-45.

At oral argument before the Supreme Court of California, petitioners sought to present evidence at a later date in support of their contention that the acts for which they stood convicted all were judicial in nature and subject to the rule of judicial immunity. It was petitioners' claim that in the orderly administration of justice, they should be accorded such a right. By its opinion, page 447, the Supreme Court of California denied their request, in effect, holding that petitioners had been accorded such a right before the trial court and jury in wholly separate and distinct criminal proceedings.

REASONS FOR GRANTING THE WRIT

1. CONFLICT OF DECISION—PROCEDURAL DUE PROCESS

The rule and opinion of the court below is in conflict with many decisions of this Court which postulate due process and equal protection constitutional principles.

The California Supreme Court having initiated steps under the California Constitution to suspend petitioners from the exercise of their functions as justices of the peace pending appeal of their criminal convictions, must assume that there is a valid judgment against petitioners. This is a state judicial act (*Ex Parte Virginia*, 100 U.S. 339, and *Twining v. New Jersey*, 211 U.S. 78) premised upon a provision in a state constitution which petitioners assert denies them procedural due process (*Hurtado v. Calif.*, 110 U.S. 516). Their assertion may be parsed as follows:

(1) Petitioners claim that despite all overt manifestations of compliance with substantive and procedural due process requirements, the trial court was without jurisdiction over the subject matter of the cause. They assert that the acts for which they were found guilty as charged were judicial acts (*Ex Parte Virginia*, 100 U.S. 339).

(2) If they were judicial acts performed by petitioners in the exercise of their judicial functions, they cannot be prosecuted therefor without destroying the independence of the judiciary in a republican form of government.

Petitioners tendered this issue to the Supreme Court of California by their traverse to the Supreme Court's Order to Show Cause. Thus they were entitled to a determination by the Supreme Court that the trial court did or did not have jurisdiction over the subject matter of their convictions. Such a determination can only be made upon enquiry into whether petitioners' acts were judicial and immune or were ministerial and prosecutable.

Despite petitioners' collateral attack upon the trial court's judgment, by its opinion (*In re Tindall and Evans*; 60 A.C. 445, 447), the Supreme Court assumed since the Superior Court had passed on its own jurisdiction that it could avoid deciding whether or not the Superior Court in fact did or did not have jurisdiction over the subject matter. Thus the Supreme Court failed to rule on the single issue posed by petitioners' traverse to the Order to Show Cause. And by such failure to rule, the order of the Supreme Court suspending petitioners from their judicial offices is itself devoid of jurisdiction. For unless the Supreme Court had jurisdiction over the litigation's subject matter, it may not act against petitioners because only upon there having been a valid judgment of conviction for a crime involving moral turpitude, not subject to collateral attack, can the Supreme Court of California suspend (Art. VI, Sec. 10a, Cal. Const., Appendix A, pp. ii and iii.)

The rationale of the decision of the Supreme Court of California is unclear. Because petitioners were granted a right to be heard by the Superior Court on

the exact issue raised herein and that Court adversely decided the issue, the Supreme Court held that there need be no further hearing (*In Re Tindall and Evans*, 60 A.C. 445, 447). Although unstated, the Supreme Court concluded as a matter of law (C.C.P. §1963 [16]) that the Superior Court's decision as to its jurisdiction was conclusive and therefore binding upon it. Petitioners assert that this is an evasion and denies their right to a full hearing to determine this issue.

To meet respondents' challenge, the Supreme Court of California perforce would have to enquire into and take evidence upon the issue as to whether respondents' acts were judicial or ministerial. For such purposes it could order counsel to abstract the record of petitioners' trial. In the alternative it could order up the trial record for examination, or it could appoint a referee to take testimony thereon and make findings. As an example, whether respondents issued one warrant of arrest or forty or did something else that is disputed, the Supreme Court must determine that the trial court had jurisdiction over the subject of respondents' trial as a *sine qua non* to making its order suspending petitioners from their judicial office. How it performs this function and what modality it employs among the several suggested by petitioners is a state matter (*Hurtado v. California*, 110 U.S. 516; *Twining v. New Jersey*, 211 U.S. 78; and *Palko v. Connecticut*, 302 U.S. 319).

But it is a federal matter when petitioners allege that by the action of the Supreme Court of California they were denied their federally guaranteed right to

a hearing to collaterally test the jurisdiction of the trial court to act against them. The right to notice and to a hearing is a procedural due process minimal accorded to all litigants (*Kennard v. Louisiana*, 92 U.S. 480; *Ex Parte Sawyer*, 124 U.S. 200; *Reetz v. Michigan*, 188 U.S. 505; Ohio ex. rel. *Bryant v. Akron Metropolitan Park District*, 281 U.S. 74. See also *Dartmouth College v. Woodward*, 4 Wheat. 518, 4 L.ed. 629, 645).

Accordingly, this Court is asked simply to direct the Supreme Court of California to set aside its order and judgment of November 18, 1963, whereby petitioners were suspended from their judicial posts, to take evidence and determine whether their acts were judicial or ministerial.

One further direction may be in order, that is to say if the California Supreme Court finds that petitioners' acts were judicial in nature within the meaning of *Ex Parte Virginia*, 100 U.S. 339, the California Court ought to be directed to enter its order of dismissal in favor of petitioners in all proceedings. For if their acts were wholly judicial, petitioners are immune from prosecution therefor.

The principle of judicial immunity, while not enforceable against the States through the guaranty section (Article IV, Section 4, Constitution of the U.S., Appendix A, p. 1; *Ohio Ex Rel. Bryant v. Akron, etc.*, 281 U.S. 74; and *Baker v. Carr*, 369 U.S. 186) is a fundamental principle of Anglo-American Common Law (Hawkins, A Treatise of the Pleas of the Crown, 1739, London, Book 1, Chapter 72, of

Conspiracy, Sections 6 and 7 and Book II, Chapter 13, of Arrest of Publick Officers, Section 20; *Taafe v. Downes,* 3 Moore P.C. 54; *Fray v. Blackburn,* 3 Best & S 576; 33 Corpus Juris, Judges, §33, p. 908; 48 Corpus Juris Secundum, Judges, §271, p. 1038; 30A Am. Jur., Judges, §86, p. 55; *Randall v. Brigham,* 7 Wall. 523; *Bradley v. Fisher,* 13 Wall. 355 and *Ex Parte Virginia,* 100 U.S. 339 particularly p. 348 of majority opinion by Strong, J. and pp. 369 and 370 of dissent by Field, J.).

While there are no express decisions thereon by this Court, surely the doctrine of judicial immunity from civil and criminal prosecutions is as much "implicit in the concept of well ordered liberty" (*Palko v. Connecticut,* 302 U.S. 319 p. 325) or "of the very essence of a scheme of ordered liberty" (*Palko v. Connecticut,* 302 U.S. 319, p. 325) as any of the Bill of Rights privileges and immunities that are incorporated through the 14th Amendment and made binding upon the States (*Gideon v. Wainwright,* 372 U.S. 335, the cited cases in footnote No. 4, 9 L.ed. 2d p. 803; *Mapp v. Ohio,* 367 U.S. 643).

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2. CONFLICT OF DECISION ON EQUAL PROTECTION OF THE LAWS

The decision of the California Supreme Court is in conflict with many decisions of this Court which interpret the equal protection clause in the first section of the Fourteenth Amendment.

California, by statute and court opinion, has developed a comprehensive system of collateral attack on

judgments which is available to litigants in all forms of actions subject to certain restrictions which will be delineated herein. As has been previously described, §1963(16) C.C.P. (Appendix A, p. x) states a disputable presumption of California judgment validity. Case law permits collateral attack against such a judgment as well as direct attack. But as interpreted, petitioners' conspiracy convictions are conclusive in the Supreme Court of California against a collateral attack.

California appellate decisions distinguish between domestic and foreign judgments. So far as domestic, i.e. California, judgments are concerned, if the judgment roll is regular on its face, extrinsic evidence is inadmissible on collateral attack even though such evidence might conclusively show absence of jurisdiction. *Phelan v. Superior Court*, 35 C. 2d 363, 372, 374; *Salinas v. Lee*, 217 C. 252, 255; and *Bennett v. Wilson*, 133 C. 379, 385. See also *Estate of Wise*, 34 C. 2d 376, 382, and, *Kaufmann v. Calif. Min. etc. Synd.*, 16 C. 2d 90. As regards judgments from other States, absence of jurisdiction may be shown by extrinsic evidence. In this regard, *see Estate of Passey*, 177 C. 367, 373, and *Estate of Hancock*, 156 C. 804, 811.

Thus it might be stated that an adequate state ground exists to affirm the state court judgment and consequently to deny to petitioners their review by this Court if one is to follow California decisions and statutes making petitioners' convictions impervious to extrinsic evidence which would destroy the conclusiveness of the trial court's jurisdiction over the subject matter.

Petitioners, however, assert federal constitutionally protected rights where the "paramount interest is federal" (*Fay v. Noia*, 373 U.S. 391, 9 L.ed. 2d 837, 864). California is free to frame by its own rubrics of general application, a procedural system which may make its trial court judgments conclusive as to jurisdiction or other matters since there is no federally enforceable right of appeal through any portion of the first section of the 14th Amendment (*Ohio ex rel. Bryant v. Akron Metropolitan Park District*, 281 U.S. 74; *McKane v. Durston*, 153 U.S. 684, 687). But such rubrics as California may employ may not be utilized to preclude petitioners from asserting federally created rights. California's rule invokes a forfeiture against petitioners. While this forfeiture may be only temporary if petitioners are successful in their direct attack against their convictions, still petitioners must hopefully gamble thereon. Petitioners assert that this Court ought "to refuse to defer to state procedural grounds, because they make burdensome the vindication of federal rights" (*Fay v. Noia*, 373 U.S. 391, 9 L.ed. 2d 837, 864, and the cases cited in footnote 41, L.ed. p. 865).

Fundamental to this discussion is the right to be heard, the right to present favorable evidence when one's life, liberty, property or reputation is at stake. California decisions discriminate against petitioners in that they say to them "Exhaust your direct attacks against what you allege to be wrongful criminal convictions. By our procedural rules we will deny to you what is everywhere recognized to be within the

concept of 'well ordered liberty', a right to be heard, even though you may be asserting federal constitutionally protected rights". In essence, the California decisions make petitioners second class litigants, as invidious a discrimination as that condemned by this Court in *Douglas v. California*, 372 U.S. 353, 9 L.ed. 2d 811, 813 and 814; *Lane v. Brown*, 372 U.S. 427, 9 L.ed. 2d 892, 897; *Draper v. Washington*, 372 U.S. 487, 9 L.ed. 2d 899, 906-907; *Coppedge v. United States*, 369 U.S. 438, 446, 8 L.ed. 21; and *Griffin v. Illinois*, 35 U.S. 12, 100 L.ed. 891.

CONCLUSION

Petitioners believe that the discretion of this Court ought to be exercised in their favor, and their petition for a writ of certiorari ought to be granted.

Dated, San Francisco, California,
April 3, 1964.

Respectfully,
GREGORY S. STOUT,
E. JOHN KLEINES,
Counsel for Petitioners.

(Appendices A and B Follow)

Appendix A

CONSTITUTION OF THE UNITED STATES

Article IV, Section 4.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence.

Amendment XIV, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF CALIFORNIA

Article III, Section 1.

The powers of the Government of the State of California shall be divided into three separate departments—the Legislative, Executive, and Judicial; and

no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this Constitution expressly directed or permitted.

Article VI, Section 10.

Justices of the Supreme Court, and of the district courts of appeal, and judges of the superior courts may be removed by concurrent resolution of both houses of the Legislature adopted by a two-thirds vote of each house. All other judicial officers, except justices of the peace, may be removed by the Senate on the recommendation of the Governor; but no removal shall be made by virtue of this section unless the cause thereof be entered on the Journal, nor unless the party complained of has been served with a copy of the complaint against him and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the Journal.

Article VI, Section 10a.

Whenever a justice of the Supreme Court, or of a district court of appeal, or a judge of any court of this State, has been convicted in any court of this State or of the United States, of a crime involving moral turpitude, the Supreme Court shall of its own motion or upon a petition filed by any person, and upon finding that such a conviction was had, enter its order suspending said justice or judge from office

until such time as said judgment of conviction becomes final, and the payment of salary of said justice or judge shall also be suspended from the date of such order. When said judgment of conviction becomes final, the Supreme Court shall enter its order permanently disbarring said justice or judge and striking his name from the roll of attorneys and counsellors, and removing said justice or judge from office and his right to salary shall cease from the date of the order of suspension. If said judgment of conviction is reversed, the Supreme Court shall enter its order terminating the suspension of said justice or judge and said justice or judge shall be entitled to his salary for the period of the suspension.

Article VI, Section 10b.

A justice or judge of any court of this State, in accordance with the procedure prescribed in this section, may be removed for willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. The Commission on Judicial Qualifications may, after such investigation as the commission deems necessary, order a hearing to be held before it concerning the removal or retirement of a justice or a judge, or the commission may in its discretion request the Supreme Court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any

such matter, and to report thereon to the commission. If, after hearing, or after considering the record and report of the masters, the commission finds good cause therefor, it shall recommend to the Supreme Court the removal or retirement, as the case may be, of the justice or judge.

The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal or retirement, as it finds just and proper, or wholly reject the recommendation. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice shall thereby be removed from office, and his salary shall cease from the date of such order.

Article VI, Section 11

Each county of the State shall be divided into judicial districts in the manner to be prescribed by the Legislature; provided, however, that no incorporated city and county shall be divided so as to lie partly within one district and partly within another.

In each district containing a population of more than 40,000 inhabitants, as ascertained in the manner prescribed by the Legislature, and in each consolidated city and county there shall be a municipal court; in each district containing a population of 40,000 inhabitants or less, as ascertained in the manner prescribed by the Legislature, there shall be a justice

court, except that the Legislature may provide that each incorporated city the boundaries of which were coextensive with those of the township two years before the effective date of this amendment and which is entirely surrounded by another incorporated city containing a population of more than 40,000 inhabitants shall constitute a judicial district in which there shall be a municipal court. For each such municipal court and justice court at least one judge with such additional judges as may be authorized, shall be elected by the qualified electors of the district; provided, however, that the judges of the municipal courts heretofore established pursuant to general law shall continue in office during the terms for which they were elected or appointed and until their successors are elected and qualify.

The Legislature shall provide by general law for the regulation, government, procedure and jurisdiction of municipal courts and of justice courts, and shall fix by law the powers, duties and responsibilities of such courts and of the judges thereof.

Except as such matters are otherwise provided in this article, the Legislature shall prescribe the manner in which, the time of which, and the terms for which the judges, officers and attaches of municipal courts and of justice courts shall be elected or appointed, the number, qualifications and compensation of the judges, officers and attaches of municipal courts, and provide for the manner in which the number, qualifications and compensation of the judges, officers and attaches of justice courts shall be fixed.

In each judicial district or consolidated city and county in which a municipal or justice court is established, and in cities and townships situated in whole or in part in such district or city and county, there shall be no other court inferior to the superior court; provided, however, that in each such district or city and county existing courts shall continue to function as presently organized until the first selection and qualification of the judge or judges of the municipal or justice court, at which time, unless otherwise provided by law, pending actions, trials and all pending business of existing courts shall be transferred to and become pending in the municipal or justice court established for the judicial district or city and county in which they are situated, and all records of such superseded courts shall be transferred to, and thereafter be and become records of said municipal or justice court.

The compensation of the justices or judges of all courts of record shall be fixed, and the payment thereof prescribed, by the Legislature.

The Legislature shall enact such general or special laws, except in the particulars otherwise specified herein, as may be necessary to carry out the provisions of this section.

Section 170.

Every person who maliciously and without probable cause procures a search-warrant or warrant of arrest to be issued and executed, is guilty of a misdemeanor.

Section 182.

If two or more persons conspire:

1. To commit any crime.

2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.

3. Falsely to move or maintain any suit, action or proceeding.

4. To cheat and defraud any person of any property, by any means which are in themselves criminal; or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform such promises.

5. To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

6. To commit any crime against the person of the President or Vice President of the United States, the governor of any state or territory, any United States Justice or Judge, or the Secretary of any of the executive departments of the United States.

They are punishable as follows:

When they conspire to commit any crime against the person of any official specified in subdivision 6,

they are guilty of a felony and are punishable by imprisonment in the state prison for not less than 10 years.

When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of the said felony. If the felony is one for which different punishments are prescribed for different degrees, the jury or court which finds the defendant guilty thereof shall determine the degree of the felony defendant conspired to commit. If the degree is not so determined, the punishment for conspiracy to commit such felony shall be that prescribed for the lesser degree, except in the case of conspiracy to commit murder, in which case the punishment shall be that prescribed for murder in the first degree.

If the felony is conspiracy to commit two or more felonies which have different punishments and the commission of such felonies constitute but one offense of conspiracy, the penalty shall be that prescribed for the felony which has the greater maximum term.

When they conspire to do any of the other acts described in this section they shall be punishable by imprisonment in the county jail for not more than one year, or in the state prison for not more than three years, or by a fine not exceeding five thousand dollars ($5,000) or both.

All cases of conspiracy may be prosecuted and tried in the superior court of any county in which any overt act tending to effect such conspiracy shall be done.

Section 1908.

The effect of a judgment or final order in an action or special proceeding before a Court or Judge of this State, or of the United States, having jurisdiction to pronounce the judgment or order, is as follows:

One—In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will, or administration, or the condition or relation of the person.

Two—In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided they have notice, actual or constructive, of the pendency of the action or proceeding.

Section 1909.

Other judicial orders of a Court or Judge of this State, or of the United States, create a disputable presumption, according to the matter directly determined, between the same parties and their representatives and successors in interest by title subsequent to the commencement of the action or special proceeding.

litigating for the same thing under the same title and in the same capacity.

Section 1963.

All other presumptions are satisfactory, if uncontradicted. They are denominated disputable presumptions, and may be controverted by other evidence. The following are of that kind:

16. That a court or judge, acting as such, whether in this State or any other State or country, was acting in the lawful exercise of his jurisdiction;

17. That a judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties;

Appendix B

In the Supreme Court of the State of California

In Bank

S. F. Nos. 21,464 and 21,465

In re Suspension of MAURICE W. TINDALL from Judicial Office.	S. F. No. 21,464
In re Suspension of GLENN W. EVANS from Judicial Office.	S. F. No. 21,465

BY THE COURT

On September 5, 1963, Maurice W. Tindall, Judge of the Justice Court for the Anderson Judicial District in the County of Mendocino, and Glenn W. Evans, Judge of the Justice Court for the Round Valley Judicial District in the County of Mendocino, were found guilty on two counts of the felony of conspiracy. In the first count they were charged with wilfully and corruptly conspiring with others to do various acts to "pervert and obstruct justice and the due administration of the laws" in violation of subdivision 5 of section 182 of the Penal Code. The second count charged them with committing the felony prohibited by subdi-

vision 1 of section 182 of the Penal Code in that they conspired to violate section 170 of that code.[1]

Judgments were entered against Tindall and Evans on October 9, 1963, and they were thereafter directed by this court to show cause why they should not be suspended pursuant to section 10a of article VI of the Constitution, which provides: "Whenever a justice of the Supreme Court, or of a district court of appeal, or a judge of any court of this State, has been convicted in any court of this State or of the United States, of a crime involving moral turpitude, the Supreme Court shall of its own motion or upon a petition filed by any person, and upon finding that such a conviction was had, enter its order suspending said Justice or judge from office until such time as said judgment of conviction becomes final, and the payment of salary of said justice or judge shall also be suspended from the date of such order. When said judgment of conviction becomes final, the Supreme Court shall enter its order permanently disbarring said justice or judge and striking his name from the roll of attorneys and counselors, and removing said justice or judge from office and his right to salary shall cease from the date of the order of suspension. If said judgment of conviction is reversed, the Supreme Court shall enter its order terminating the suspension of said

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[1]Under section 182, subdivision 1, two or more persons who conspire to "commit any crime" may be found guilty of a felony, and section 170 provides, "Every person who maliciously and without probable cause procures a search-warrant or warrant of arrest to be issued and executed, is guilty of a misdemeanor."

justice or judge and said justice or judge shall be entitled to his salary for the period of the suspension."

In response to the order to show cause a contention has been made in which we find no merit, namely, that this proceeding has been superseded by one pending before the Commission on Judicial Qualifications under section 10b of article VI of the Constitution. Section 10b expressly provides that it is "cumulative with" the method of removal of judges set forth in section 10a.

Nor can respondents now avoid suspension on the ground that the trial court lacked jurisdiction because, assertedly, a judge is entitled to immunity from the type of criminal prosecution involved here. The question of the trial court's jurisdiction can be raised on appeal and is not appropriate to this proceeding. Our function under section 10a is to determine whether respondents have been convicted of a crime involving moral turpitude and, if so, to order their suspension.

It seems clear that the offenses of which respondents were convicted involve moral turpitude. In the case of *In re Craig* (1938) 12 Cal.2d 93, 97 [82 P.2d 442], where an attorney was disbarred this court stated: "We entertain no doubt that the offense of conspiring to corruptly influence, obstruct, impede, hinder and embarrass the due administration of justice, with which respondent was charged and of which he was convicted in the United States District Court, falls easily within the definition of 'moral turpitude'."

The contention is also made that respondents are denied due process of law by the procedure provided

for in section 10a. We do not agree. Respondents have had a hearing in the trial court on the charges against them, and they have had an opportunity before this court to show cause why they should not be suspended pending appeal.

Pursuant to section 10a of article VI of the Constitution of California each respondent is suspended from his office of judge of the justice court, and payment of his salary as judge is likewise suspended, effective as of this date.

Filed November 18, 1963.